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No. 88-378

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES
October Term, 1988

DONALD A. BOLING
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE
SIXTH CIRCUIT, CINCINNATI, OHIO

DONALD A. BOLING
Petitioner, Pro Per
7424 Davis Mill Circle
Harrison, TENN 37341
(615) 344-2057

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QUESTIONS PRESENTED

1. Whether the lower Court erred by prosecuting and convicting petitioner for willful failure to file returns while returns were timely filed?

2. Whether the lower Court had subject matter jurisdiction to prosecute petitioner for willful failure to file returns when returns were filed?

3. Whether the petitioner is an "person" defined in §7343, Title 26 United States Code?

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PETITION FOR WRIT OF CERTIORARI
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APPLICATION FOR CERTIORARI

COMES NOW the petitioner, Donald A. Boling, and respectfully applies for Certiorari to this Honorable Supreme Court of the United States of America from the Order and Decision entered by

the United States District Court and affirmed on Appeal by the Sixth Circuit Court of Appeals.

IN SUPPORT THEREOF, the following is shown unto the Court.

JURISDICTIONAL STATEMENT

This Court has original jurisdiction pursuant to the Constitution of the United States of America, Article III.

There has been a final judgment by the Sixth Circuit Court of Appeals pursuant to 28 USC §1292.

ISSUES INTENDED FOR PRESENTATION

1. Whether the lower Court erred in giving the jury instructions regarding willfulness.

2. Whether the lower Court had subject matter jurisdiction to prosecute

petitioner for willful failure to file returns when returns were filed.

3. Whether the petitioner is an "person" defined in §7343, Title 26 United States Code.

STATEMENT OF THE CASE

The petitioner, Donald A. Boling, was charged by indictment with two counts of willfully failing to make income tax returns under 26 U.S.C. §7203, Internal Revenue Code of 1954 for calendar years ended 1982 and 1983.

On October 31, 1986, a jury returned a verdict of guilty under all counts against the petitioner. Under the judgment and commitment order of the United States District Court, Judge R. Allan Edgar, dated December 10, 1986, the petitioner was ordered imprisoned for a term of one year with respect to count one.

The petitioner was further ordered

imprisoned for a term of one year with respect to count two, the execution of sentence suspended with probation for a period of five years. Probation to be consecutive to the sentence imposed on count one.

The petitioner voluntarily turned himself in to the prison authorities and timely filed his notice of appeal to the Sixth Circuit Court of Appeals.

Thereafter, the Sixth Circuit affirmed the conviction as aforestated. The mandate was issued by the Sixth Circuit Court of Appeals on February 12, 1988. As such, the filing of this Application for Certiorari is timely pursuant to Rule 12, Supreme Court Rules.

The petitioner served his prison term and is presently on probation.

With respect to the jury instructions regarding willfulness, the decision of the Sixth Circuit is contrary to the

decisions in the cases cited by the petitioner throughout this appeal and the cases cited by the Sixth Circuit Panel itself. The instructions complained of did not instruct the jury to apply an subjectvie standard in assessing wilfulness but incorrectly allowed the jury to apply an objective standard, i.e., what they believed was reasonable.

With respect to the issue of the W-2 information returns, the decision of the Sixth Circuit Panel is contrary to the Spirit and Intent of the Law as stated in the FEDERAL REGISTER, Tuesday, Oct. 19, 1954, Volume 19, Number 203, page 6687; United States v, Barnes, 222 US 512 (1911); Scar v. C.I.R., 814 F2d 1363 (1987); Gould v. Gould, 245 US 150 (1971); and the IRS 1983 Regulation, §1.6052-1.

With respect to the issue of "person" as defined in I.R.C. §7343, the decision

of the Sixth Circuit Panel is contrary to RULES OF CONSTRUCTION, Title 1 U.S.C., Chapter 1; TREASURY DECISION, T.D. 3980, Volume 29 page 64, 65 (1927); Reiter v. Sonotone Corp., 442 US 330 (1979); Richards v. United States, 369 US 1 (1962); and Consumer Product Safety Comm'n v. GTE Sylvania, Inc, 447 US 102 (1980).

Petitioner submits the attention of this Supreme Court of the United States need be directed to the issues of this case because of the grave Constitutional consequences and public importance and further, because the lower Court's mandate of February 12, 1988 directly conflicts with the aforesaid authority and further creates confusion and absurd results within The Internal Revenue Codes of 1939 and 1954.

ARGUMENT

The opinion of the Sixth Circuit panel upheld the jury instruction utilized by the trial Court with respect to the issue of willfulness. The panel determined that the instuction complained of by the petitioner "clearly set forth a subjective intent standard.". The panel then cited as authority (in denying the appeal on this issue) Untied States v. Whiteside, 810 F.2d 1306 (5th Cir. 1987) and United States v. Turano, 802 F. 2d 10 (1st Cir. 1986).

The problem created by the use of Whiteside and Turano, is that the instructions regarding willfulness in those cases indeed gave the correct standard to apply in assessing willfulness. Those trial Courts informed the jury panel, unlike this trial Court, that in determining defendant's good faith

misunderstanding of the law, they were commanded not to make there decision based upon what they or someone else believed or thought the defendant ought to have believed but there decision was to be based upon what they found the defendant believed in his own mind.

See Petitioner's Appendix, page 9-12.

In this case, the jury instructions with respect to willfulness displays that the judge instructed the jurors that if the petitioner acted without reasonable ground for his belief the jury could find his conduct willful. The Court did not instruct the jurors how they were to determine reasonable ground as did Whiteside and Turano, both supras. The instruction, read as a whole, leaves the obivious conclusion that the jurors were allowed to inject their beliefs with respect to the reasonableness of petitioner's beliefs.

Such an instruction results in an objective reasonable standard being employed in assessing willfulness. Due process is denied to the petitioner, in that, his good faith defense is taken away by the jurors utilizing their own beliefs as a standard. Willfulness is to be determined by the petitioner's state of mind, irregardless of what the jurors believed or someone else believed or what they thought the petitioner ought to have believed. If the petitioner received a jury instruction such as read in Whiteside, supra, the result in all likelihood would be that the appellant would have been found not guilty.

The complete instuction given in this case with respect to willfulness reads as follows:

See petitioner's appendix, page 14-20.

Reviewing the instructions

as a whole, they are confusing and even contradict themselves.

No where did the Court instruct the jurors that it was their duty to find whether the petitioner in good faith believed in his position, based upon his beliefs and not theirs or someone elses. In fact, the Court charged the jurors at page 270 of the trial transcript to make decisions as seemed justified in light of their experience.

"You are permitted to draw from facts which you find to have been proved such reasonable inferences as seemed justified in light of your experience." (Trial Transcript, page 270, line 12 thru 14).

This charge, coupled with the charge that the jurors could determine whether the petitioner closed his eyes to what would otherwise be obviouvs to "them", (the jury, not the petitioner), takes

away the petitioner's state of mind as the main issue and injects their state of mind as to what they would have done under the circumstances. An objective test was employed by the jurors in assessing willfulness because they were charged to apply their experience and what was obivous to them, not the petitioner's experience and what was obivious to him.

This takes away petitioner's good faith misunderstanding defense, directs a verdict of guilty, and usurps the function of the jury.

Also to top this off, the Court commands that all persons know what the law forbids or requires. This case was not to be an issue of the jurors experience or what would be obivious to them or what all persons should know concerning the law, but what the petitoner's experience was and what was obivious

to him and what he knew the law forbid or required.

And lastly, the Court instructed that a good faith misunderstanding of the law "mandates" willfulness. (See Trial Transcript Vol II, page 279, petitioner's appendix page 20). This charge is totally in error. Petitioner objected to the trial transcript being changed to read as the government believed it should have read and the panel made no mention of the objection.

This Court, in the interest of justice, should reverse the opinion affirming petitioner's conviction. To allow this conviction to stand based upon the jury instuctions as read will most assuredly cause confusion and further injustice to other defendant's who will most likely be subjected to this objective standard in assessing willfulness.

Wherefore, the petitioner moves this Highest Court to reverse this conviction and remand this case to the district Court for further proceedings.

II

The Sixth Circuit panel gives a very weak opinion that the petitioner's reliance upon an old statute is misplaced because nothing in the new statute permits the filing of a W-2 information return as a substitute to a 1040 information return. The Court claims the old statute was repealed, however, fails to state where the old law was repealed and where there is a manifest and total repugnancy in the new provisions to lead to the conclusion that the later laws abrogated, and were designed to abrogate, the former.

To this very weak opinion the petitioner will show:

FEDERAL REGISTER Tues. Oct. 19, 1954
Volume 19, Number 203, Page 6687

"....The new title does not supersede the present "Title 26--Internal Revenue" as to those facts or circumstances to which the provisions of the Internal Revenue of 1939 are applicable."

In the case United States v. Barnes, 222 U.S. 513 (1911), this Court determined "The more natural, if not the necessary, inference in all such cases is, that the legislature intend the new laws to be auxiliary to and in aid of the purposes of the old law,..." "There certainly, under such circumstances, ought to be a manifest and total repugnancy in the provisions to lead to the conclusion that the latter laws abrogated, and were designated to abrogate, the former." 222 US at 520.

"It would be an unsound and unsafe rule of construction which would separate from the tariff revenue system, consisting of numerous and diverse enactments, each new act altering it, in any of its details, or prescribing new duties in lieu of existing ones on particular articles. The whole system must be regarded in

each alteration, and no disturbance allowed of existing legislative rules of general application beyond the clear intention of Congress." (emphasis added) Saxonville Mills v. Russel, 116 US 13,21; cited by Barnes supra, at 222 US 520, 521.

The lower Court has applied a contrary rule of construction to the issues presented in this case. They have taken it upon themselves to disturb existing legislative rules where there is no clear intention of Congress to do so. This is nothing more than judicial legislation and cannot be allowed to stand.

Furthermore, the panel claims even if the outdated regulation were still in force, it would not help the petitioner's position because he did not send the original W-2 information return to the Secretary. The panel then erroneously assumes the defendan's employer sent the employer's copy to the Secretary. To make such an assumption when a citizens life, liberty and pursuit of happiness

is at stake is frightening.

The older regulation allowed the employee to send the original W-2 to the Secretary as a substitute to the 1040. Under the new regulation however, the employee no longer receives the original (Copy A) **because the employer sends the original to the Secretary** as it is stated on the W-2 itself. Nothing has changed from the new provisions with respect to the old provisions except the employer directly sends the original information return to the Secretary and sends a copy to the employee. That original still constitutes a substitute because nothing in Part 601 displays a manifest and total repugnancy in the provisions to lead to the conclusion that the latter laws abrogated, and were designated to abrogate the former. Barnes, surpa.

Furthermore, in Scar v. C.I.R., 814

F.2d 1363 (9th Cir. 1987), in a dissenting opinion by Circuit Judge, Cynthia Holcomb Hall, she states at foot note 4: "With well over 100 million income tax returns plus an even larger number of information returns, such as Forms W-2 and 1099's, being filed annunally, it is no wonder the Commissioner has turned to the computer." (emphasis added).

In Scar, supra, a Circuit Judge recognizes a W-2 is in fact an information return. It provides information returned to the Secretary so he may assess a tax as it is his duty under I.R.C. §6201, 6202 and 6303.

Furthermore, IRS Regulation (1983) §1.6052-1 confirms the Secretary considers W-2 forms to be returns. (See petitioner's appendix, page 21,22) Because returns were timely filed with respect to the petitioner; returns which the Secretary could have assessed a tax upon, (as he

utilizes said returns to determine deficiencies under §6213, I.R.C.), the petitioner could not be guilty of willful failure to file returns.

The panels opinion reaks of doubt or it wouldn't have waisted its time in addressing if the old regulation is not repealed. In case of doubt, all doubt must be resolved in favor of the defendant. Gould v. Gould, 245 US 150 (1971).

In this case, all doubt was resolved in favor of the taxing authority. As such, this Highest Court should reconsider the opinion entered by the Sixth Circuit.

Wherefore, it is moved this Highest Court reverse and remand this case to the district Court for further proceedings, namely to dismiss the Indictment.

III

The petitioner argued that he is not a "person" defined in I.R.C. §7343 and as such, is not one intended by Congress to be criminally prosecuted under I.R.C. 7203. The panel dismisses this issue stating nothing is §7343 limits the ordinary meaning of "person" so as to exclude individuals such as petitioner. It should be noted that nothing in §7343 suggests that the petitinoer is a "person" defined for purposes of Chapter 75 prosecutions. The Court, no doubt applied a rule of construction that "includes" is an expansion when used in a definition and not a restriction. The panels rule of construction is misplaced. Montello Salt Co. v. Utah, 221 U.S. 452,466)

U.S.C. TITLE 1 (1987 Edition)
CHAPTER 1 -- RULES OF CONSTRUCTION

Sec. 1 Words denoting number, gender, and so forth.

> In determining the means of any Act of Congress, unless the context indicates otherwise- words importing the singular include and apply to several persons, parties or things; words importing the plural include the singular;..

To claim the definition in §7343 does not limit the ordinary meaning of "person" creates confusion in the Code. Why would Congress specifically define "person" in §7343 differently that it defined "person" in §7701?

The Panels opinion cannot be allowed to stand or the results could be a grave injustice placed against the American people, as this case is an example of. Congress would have not given a different definition to "person" in §7343 if it intended the term to apply to everyone.

The I.R.S. instructs its special agents at §415.21(a) that "Persons liable under IRC §7203 include those described in IRC §7343."

The lower Court Panel did not start with the language employed by Congress but inserted its own opinion, thus enlarging said language.

As in all cases "our starting point must be the language employed by Congress" Reiter v. Sonotone Corp, 442 US 330, 337 (1979); and it must be assumed "that the legislative purpose is expressed by the ordinary meaning of the words used" (emphasis added) Richards v. United States, 369 US 1,9 (1962). Thus, "[a]bsent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Consumer Product Safety Comm'n v. STE Sylvania, Inc., 447 US 102 (1980).

No where in the language of §7343 does it call for an interpretation such as this panel has given that the definition does not limit the ordinary meaning of

the term "person". To the contrary, the language itself is clear and conclusive.

CODE OF FEDERAL REGULATIONS TITLE 26
Revised January 1, 1961
Sec. 170.59 Includes and including.
"Includes" and "Including" shall not be construed to exclude things other than those enumerated which are in the same general class. (emphasis added)

In no way can this appellant be said to fall within the same general class as those defined in §7343, supra.

This Highest Court should reverse and remand this matter to the district Court and order dismissal of the Indictment.

C O N C L U S I O N

WHEREFORE, the petitioner prays this Highest Court hear this Application for Certiorari; grant the relief sought herein; reverse and remand this case to the trial Court with orders to dismiss

the indictment with prejudice; or in the alternative, dismiss the indictment and order the trial Court to vacate it's judgment and commitment order and release the petitioner from probation; and what other and further relief this Court deems just and fair.

Respectfully Submitted this 12 day of May, 1988.

Donald A. Boling
Petitioner, Pro Per
7424 Davis Mill Circle
Harrison, Tenn. 37341
(615) 344-2057

CERTIFICATE OF SERVICE

I hereby certify that I mailed two correct copies of the foregoing to the Solicitor General, Department of Justice, Washjington, D.C. 20530, this 12 day of May, 1988, in a plain wrapper, postage prepaid.

Donald A. Boling

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UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 48202

February 12, 1988

Mr. Karl Saulpaw, Clerk
U.S. District Court
P.O. Box 591
Chattanooga, TN 37401

Re: Case No. 87-5051
U.S.A. vs. Boling
Dist.Ct No 86-64

Dear Mr. Saulpaw:

Enclosed please find:

(xxx) the mandate issued in the above-styled case;
(xxx) the certified record;

Please acknowledge receipt of the above on the enclosed copy of this letter and return it to this office.

Yours very turly
JOHN P. HEHMAN, CLERK

_____
Deputy Clerk
(Ms.) Michelle D. Marr

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

No. 87-5051

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNTIED STATES OF AMERICA,

Plaintiff-Appellee

V.

DONALD A. BOLING,

Defendant-Appellant

ON APPEAL FROM THE US DISTRICT COURT FOR THE EASTERN DISTIRCT TENNESSEE

_____/

Before MARTIN and GUY, Circuit Judges: and JOHNSTONE* Chief District Judge

PER CURIAM. Donald A. Boling appeals his conviction for willfully failing to file income tax returns as required by 26 U.S.C. §7203.

During 1982 and 1983, Boling was employed by the Tennessee Valley Authority. In 1972, he earned $30,885.03, and, in 1983, he earned $35,241.44. Although Boling filed proper income tax returns

for 1977 through 1980, he reported that he earned no wages in 1981, despite having earned $34,173.95. Then, in 1982 and 1983, Boling did not file income tax returns.

Beginning in December 1981, Boling attempted to prevent income tax withholding by submitting W-4 forms on which he claimed he was exempt from withholding. As a result, no tax was withheld in 1982. Boling based this claim on the contention that "wages" did not constitute income. The Internal Revenue Service notified Boling that his position was invalid, and the Internal Revenue Service disallowed Boling's exemption claim and assessed a penalty for filing a false form. Boling subsequently paid the penalty. The Internal Revenue Service also audited his 1981 income tax return, and Boling received a "30-day letter" notifying him of the proposed audit findings.

This letter, which advised Boling that he owed $11,409 in taxes for 1981, clearly explained that wages were taxable as income.

Boling was indicted on two counts of willful failure to file income tax returns. The jury returned guilty verdicts on both counts.

In this appeal, Boling challenges the trial court's jury instructions. He contends that the instructions regarding the willfulness element improperly permitted the jury to apply an "objective reasonableness standard."

This argument is without merit. The trial court's jury instructions included the following statements:

> If a person in good faith believes that he has done all the law requires, he cannot be guilty of the criminal intent to willfully fail to file income tax returns. But if a person acts without reasonable ground for the belief that his conduct is lawful, it is for the jury to decide whether he acted in good

faith or whether he willfully intended to fail to file a tax return....

The more unreasonable the defendant's alleged belief that he did not have to file a tax return, the less likely he, infact, held that belief. Stating this obvious point does not eliminate the requirement that, in order to convict, the jury find the defendant knew he was legally required to file.

(NOTE): **This last paragraph, no where is it found in the jury instructions utitlized by the trial court.**

These instructions clearly set forth a subjective intent standard. See United States v. Whiteside, 810 F.2d 1306 (5th Cir. 1987). The language to which Boling objects merely provided guidance to the jury in determining his actual state of mind. United States v. Turano, 802 F. 2d 10 (1st Cir. 1986). The court's "conscious avoidance" instruction was similarly unobjectionable.

Boling also contends that he was improperly found guilty of filing to file income tax returns because the W-2 forms filed by his employer constitutied

income tax returns. Boling relies on 26 C.F.R. 601.17(a) (1949), which provided that an employee could file a W-2 form in lieu of an income tax return.

This argument is also without merit. The regulation on which Boling relies was superseded by the current Part 601, which was first published in the Federal Register on June 30, 1955. (26 F.R. 4621). Nothing in Part 601, or any other part of the current Internal Revenue regulations, permits the filing of a W-2 form by itself as an individual's income tax return. Moreover, even if the outdated regulation were still in force, it would not mandate Boling's acquittal. The antiquated regulation provided that the original W-2 form, which the employee receives, may serve as a substitute for an income tax return. That regulation, therefore, implicitly required an employee to file the W-2

form. Here, Boling apparently did not file his W-2 form. Rather, the evidence suggests that his employer filed the employer's copy with the government. See United States v. Birkenstock, 823 F.2d 1026 (7th Cir. 1987)

Boling's third and final argument is patently frivolous. He contends that the trial court lacked "subject matter jurisdiction in persona" because he is not a "person" as defined in 26 U.S.C. §7343. Nothing in section 7343 limits the ordinary meaning of "person" so as to exclude individuals such as Boling. Moreover, this argument does not speak to the trial court's jurisdiction. The court has subject matter jurisdiction over criminal tax offenses under 18 U.S.C. §3231, and the court had personal jurisdiction over Boling because he was in its custody. Ford v. United States, 273 U.S. 593 (1927).

Accordingly, Boling's convictions are hereby affirmed.

ISSUED AS MANDATE: 2/12/86

Costs; none

A TRUE COPY

M Marr
Deputy Clerk

UNITED STATES V. WHITESIDE,
810 F. 2d 1306, 1311 (5th Cir. 1987)

"The defendant's conduct is not willful if he acted through negligence, inadvertence, justifiable excuse, mistake, or due to his good faith misunderstanding of the requirements of the law. If a person believes in good faith that he has done all that the law requires, he cannot be guilty of the criminal intent to willfully fail to file a tax return. But, if a person acts without reasonable ground for belief he acted in good faith or whether he willfully intended to fail to file a tax return. A defendant's conduct is not willful, if he had a genuine misunderstanding of the tax laws. On the other hand, one who believes, even in good faith, that the income tax laws are unconstitutional is a willful violator of the law if he understands the duties

the law imposes upon him. A disagreement with the law is not a defense. In considering the defendant's good faith misunderstanding of the law, you must make your decision based upon what the defendant believed in his own mind, and not upon what you or someone else believe or think the defendant ought to believe. The test is whether the defendant himself believed in good faith that the was not required to file a federal income tax return. If he did, then you must find him not guilty of the offense charged. (emphasis added). U.S. v. Whiteside, at 1311.

UNITED STATES V. TURANO,
802 F. 2d 10, 11 (1st Cir. 1986)

"Appellant claims that the trial judge's supplemental instruction to the jury explaining the good faith defense improperly injected an objective element unto the subjective test. The entire supplemental instruction follows: **But if you find that he sincerely and in good faith believed that the law was that he did not have to file a return either because wages are not income or because the Fourth and/or Fifth Amendment of the Constitution do not require filing, then you cannot find that he acted willfully. Good faith is a state of mind. Did he sincerely, honestly believe what the law, what he said the law required, or did he in fact know what the law required and simply disagreed with it?**

In deciding **his state of mind**, you

may consider whether **his position** was wholly frivolous **from his point of view, and on what it was based and what he did to find out what the underlying law was**. Does that help you?" (emphasis added). U.S. v. Turano, at 11.

TRIAL TRANSCRIPT, VOL. II, PAGE 270
United States v. Boling
6th Cir. Case No. 87-5051
District Court #86-64

LINES 12, 13 and 14.

"You are permitted to draw from facts which you find to have been proved such reasonable inferences as seemed justified in light of your experience."

TRIAL TRANSCRIPT, VOL. II
PAGES 277, 278, 279, 280
United States v. Boling
6th Cir. Case No. 87-5051
District Court #86-64

STARTING LINE 6-PAGE 277
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The specific intent of willfullness is an essential element of the crime of failure to file an income tax return.

The word "Willfully" used in connection with this defense means a voluntarily intent, intentional violation of a known legal duty or otherwise stated with the wrongful purpose of deliberately intending not to file a return which the Defendant was required to file and knew he should have filed.

Thus, the willfullness requirement of the statute is satisfied if there is a deliberate intent not to file returns that the Defendant knows ought to be

filed.

There is no necessity that the Government prove that the Defendant had an intention to defraud it or to evade the payment of taxes for the Defendant's failure to file to be willful under this provision of the law.

The Defendant's conduct is not willful if he acted through negligence, inadvertence, or mistake or due

to his good faith misunderstanding of the requirements of the law.

It should be pointed out, however, that neither a Defendant's disagreement with the law nor his own belief that such law is unconstitutional, no matter how earnestly held, constitute a defense of good faith misunderstanding or mistake.

It is the duty of all citizens to obey the law, whether they agree with it or not. The only purpose necessary

for the Government to prove in this case is the deliberate intention on the part of the Defendant not to file tax returns which he knew he was required to file at the time he was required by the law to file them.

It is not necessary for the prosecution to prove that the Defendant knew that a particular act or a failure to act is a violation of the law. Unless outweighed by the evidence in the case to the contrary, the presumption is, that every person knows what the law forbids and what the law requires to be done.

If a person in good faith believes that he has done all the law requires, he can not be guilty of the criminal intent to willfully fail to file tax returns. But if a person acts without reasonable ground for belief that his conduct is lawful, it is for the jury

to decide whether he acted in good faith or whether he

willfully intended to fail to file a tax return.

A good faith misunderstanding of the law mandates willfullness, but a good faith disagreement with the law does not. If the Defendant was aware of the filing requirement and simply chose to file or not to file the documents he did out of disagreement or out of a belief that the law was unconsitutional, this would not be a defense.

However, a Defendant cannot be convicted simply because his reason for failing to file was legally unsubstantial if the Defendant believed in good faith that the reason was sufficient.

Comments, arguments and evidence have been introduced in this case which set forth legal opinions and court

decisions. These have been admitted, solely, for the purpose of aiding you and determining the Defendant's willfulness and state of mind.

You are not to consider this evidence as containing any law they are to imply in reaching your verdict, because all of the law applicable to this case is set forth in these instructions of the Court.

The element of knowledge may be satisfied by inferences drawn from proof that the Defendant closed his eyes to what would, otherwise, have been obvious to them. namely that wages constitute taxable income as set forth

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in the laws of the United States.

A finding beyond reasonable doubt of a conscious purpose by the Defendant to avoid enlightenment of the law would permit an inference of knowledge.

Stated another way, the Defendant's knowledge of the fact may be inferred from his willful blindness to the existence of that fact.

It is entirely up to you as to whether you find any deliberate closing of the eyes by the Defendant with regard to the requirements of the Internal Revenue laws and the inference to be drawn from such evidence.

A showing of negligence or of good faith mistake of the law is not, however, sufficient to support a finding of willfulness or knowledge."

SUBSTITUTE OFFICIAL COURT REPORTER'S CERTIFICATION

I, Kimberly J. Nixon, Substitute Official Court Reporter in and for the United States District Court, Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee, do hereby certify that I reported in machine shorthand the proceedings had in open Court on October 30th and 31st, 1986, and that the foregoing is a true and accurate transcript of said proceedings.

This 2nd day of March, 1987

s/_____
Kimberly J. Nixon
Substitute Official
Court Reporter

INFORMATION RETURNS
1983 IRS REGULATIONS
§1.6052-1.

INFORMATION RETURNS REGARDING PAYMENT OF WAGES IN THE FORM OF GROUP-TERM LIFE INSURANCE.

(a) Requirement of reporting-(1) In general. Every employer, who during any calendar year provides any one of his employees remuneration for services in the form of group-term life insurance on the life of such employee any part of the cost of which is to be included in such employee's gross income as provided in section 79(a), shall make a separate return on Form W-2 with respect to each such employee for such year which includes the following information:

(i) Name, address, and identifying number of the employer;

(ii) Name, address and social security number of the employee; and

(iii) Total amount includivble

in the employee's gross income by reason of the provisions of section 79(a), computed as if such employee reported his income on the basis of a calendar year (determined as if the employer making such return is the only employer paying the employee remuneration in the form of group-term life insurance on his life, which is includible in his gross income under section 79(a)).

Returns on Form W-2 required to be filed pursuant to the provisions of this section shall be transmitted by Form W-3. In a case where, with respect to the same employee, an employer must make a return on Form W-2 under this section and also under §31.6011(a)-4 or §31.6011(a)-5 shall also be used as the transmittal form for a return on Form W-2 made pursuant to the provisions of this section.